

## **NONCOMPETITION AND NONSOLICITATION AGREEMENT**

This NONCOMPETITION AND NONSOLICITATION AGREEMENT ("Agreement") is made as of May \_\_, 1995 among America Online, Inc., a Delaware corporation ("AOL"), AOL Acquisition Corp., a California corporation ("Sub"), and \_\_\_\_\_ ("Participant").

### **RECITALS**

A. This Agreement is entered into in connection with an Agreement and Plan of Reorganization (the "Plan") dated as of May \_\_, 1995, among AOL, Sub and Wide Area Information Servers, Inc., a California corporation ("WAIS"), pursuant to which Sub is to merge with and into WAIS. The effective date of this Agreement will be the date the merger becomes effective under the terms of the Plan (the "Effective Date"). Should the Plan be terminated prior to the effectiveness of the merger, this Agreement shall be of no further force or effect.

B. Participant is the \_\_\_\_\_ of WAIS and has been actively involved in the operations of WAIS. To preserve and protect the intangible assets of WAIS, including WAIS's good will, customers and trade secrets of which Participant has knowledge, and in consideration for AOL's and Sub's entering into and performing under the Plan, the parties hereto enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing background and the mutual agreements of the parties contained herein, AOL, Sub and Participant hereby agree as follows:

#### **1. Covenant.**

(a) From the Effective Date until the expiration of the Non-Compete Period (as hereinafter defined), Participant shall not, directly or indirectly, individually or as an employee, partner, officer, director or shareholder or in any other capacity whatsoever of or for any person, firm, partnership, company or corporation other than AOL or its subsidiaries (i) own, manage, operate, sell, control or participate in the ownership, management, operation, sales or control of or be connected in any manner with any business engaged in (A) publishing intellectual property on the Internet, or (B) the design, research, development, marketing, sales, or licensing of, or any systems integration, consulting or other services relating to or competitive with any computer program or products created, distributed or known by Participant to be under development by AOL or any of its subsidiaries or by WAIS prior to the termination of Participant's employment with AOL and its subsidiaries, or (ii) recruit, attempt to hire, solicit, assist others in recruiting or hiring, or refer to others concerning employment of, any person who is or was, an employee of WAIS or AOL or any of its subsidiaries or induce or attempt to induce any such employee to terminate his or her employment with WAIS, AOL or any of its subsidiaries; provided that, if Participant's employment with AOL and its subsidiaries is

terminated without cause by AOL and/or its subsidiaries, then during the period following such termination through and including the expiration of the Non-Compete Period, AOL shall (A) pay or cause to be paid to Participant an amount equal to the same base salary and provide the same benefits, excluding bonuses, as paid and provided to Participant by AOL or its subsidiaries at the time of such termination, on the same terms, including timing of payments and otherwise, as said amounts were paid and benefits provided to Participant during Participant's employment with AOL or its subsidiaries and (B) shall continue the vesting of Participant's stock options on the same basis as such stock options vested while Participant was employed by AOL or its subsidiaries. Notwithstanding anything else to the contrary in this Agreement, this Agreement (other than Section 2 hereof) shall terminate upon the earlier of (i) the third anniversary of the Effective Date and (ii) the later of (A) the second anniversary of the Effective Date and (B) the first anniversary of Participant's termination of employment as an employee of AOL and its subsidiaries (the "Non-Compete Period").

(b) The foregoing restrictions will not apply to Participant's personal investments in publicly traded corporations regardless of the business they are engaged in, provided that Participant does not at any time own in excess of one percent (1%) of the issued and outstanding stock of any such corporation.

2. Other Agreements. Participant represents that Participant has no other agreements or commitments that would hinder the performance of Participant's obligations under this Agreement and Participant will not enter into any such agreements. Participant will indemnify AOL and hold it harmless from any claims, damages, losses and expenses incurred by AOL as a result of any breach of Participant's representations and obligations under this Section 2.

3. AOL Agreements. Participant shall enter into AOL's standard Confidentiality, Non-Competition and Proprietary Rights Agreement, which is attached hereto as Exhibit A; provided that Sections 10, 13 and 14 shall be deleted from such agreement as to Participant.

4. No Obligation to Employ. Nothing in this Agreement shall confer or be deemed to confer on Participant any right to continue in the employ of, or to continue in any other relationship with AOL, Sub or any parent, subsidiary or affiliate of AOL or Sub, or limit in any way the right of AOL or Sub or any parent, subsidiary or affiliate of AOL or Sub to terminate Participant's employment or other relationship at any time, with or without cause.

5. Remedy. Because Participant's breach of Section 1 of this Agreement will cause AOL irreparable harm for which money is inadequate compensation, AOL will be entitled to immediate injunctive and other preliminary and equitable relief against any material breach or threatened breach of this Agreement, in addition to damages and any other available remedies.

6. Assignment; Successors. Due to the unique nature of the services to be provided hereunder, Participant may not delegate his or her duties under this Agreement. This Agreement is binding upon and inures to the benefit of AOL and Sub and their successors and assigns.

7. Modification. This Agreement may be modified or amended only by a writing signed by AOL, Sub and Participant.

8. Governing Law. The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding that body of law pertaining to conflict of laws.

9. Severability. If any provision of this Agreement is to any extent invalid under applicable law, that provision shall be enforced to the extent permissible, and the remaining provisions of this Agreement shall continue in full force and effect.

10. Non-Waiver. No failure to delay by AOL or Participant in exercising any right or remedy under this Agreement shall waive any provision of this Agreement, nor shall any single or partial exercise by AOL or Participant of any right or remedy under the Agreement preclude any of them from otherwise or further exercising these rights or remedies, or any other rights or remedies by law or any related documents.

11. Captions. The headings in this Agreement are for convenience only and do not effect interpretation of this Agreement.

12. Entire Agreement. This Agreement, together with attachments hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous and contemporaneous oral and written negotiations, agreements or other commitments.

13. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and hand delivered, or sent by facsimile, certified first class and hand delivered, or sent by facsimile, certified or registered first class mail, postage pre-paid, or sent by an internationally recognized express courier service. Such notices and other communications shall be effective upon receipt if personally delivered or on the next business day if sent by facsimile, three (3) business days after mailing if sent by mail, and one (1) business day after dispatch if sent by express courier, to the following addresses, or such other addresses as either party shall notify the other party:

If to AOL:	America Online, Inc. 8619 Westwood Center Drive Vienna, VA 22182 Attn: Ellen M. Kirsh, Esq., General Counsel
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If to Participant:	At the address listed on the signature page hereto.
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14. Attorneys' Fees. In the event of any claim, demand arbitration or suit arising out of or with respect to this Agreement, the prevailing party shall be entitled to reasonable costs and attorneys' fees, including any such costs and fees upon appeal.

15. Arbitration Agreement. Any controversy between the parties regarding the construction or application of this Agreement, and any claim arising out of this Agreement or its breach, shall be submitted to arbitration on the written request of one party by the service of that

request on the other party. Such arbitration shall be held under the California Code of Civil Procedure, section 1280 et. seq., as amended.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original as regards any party whose signature appears thereon and all of which together will constitute one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, will bear the signatures of the parties reflected hereon as signatories. Facsimile copies of such counterparts are acceptable.

IN WITNESS WHEREOF, this parties hereto have signed this Agreement as of the date first written above.

AMERICA ONLINE, INC.

PARTICIPANT

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

AOL ACQUISITION CORP.

Address:  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

[SIGNATURE PAGE TO NONCOMPETITION AND NONSOLICITATION AGREEMENT]



EXHIBIT A

## Confidentiality/Non-Competition/Proprietary Rights Agreement

In consideration for the agreement of America Online, Inc. ("America Online") to employ me and as a condition to my continued employment by America Online, I hereby agree as follows:

1. I acknowledge that I may be furnished or may otherwise receive or have access to information which relates to America Online's past, present or future products, software, research, development, improvements, inventions, processes, techniques, designs or other technical data, or regarding administrative, management, financial, marketing or manufacturing activities of America Online or of a third party which provided proprietary information to America Online on a confidential basis. All such information, shall be considered by America Online as proprietary and confidential ("Proprietary Information").
2. Both during and after the term of this Agreement, I agree to preserve and protect the confidentiality of the Proprietary Information and all physical forms thereof, whether disclosed to me before this Agreement is signed or afterward. In addition, I shall not (i) disclose or disseminate the Proprietary Information to any third party, including employees of America Online without a need to know, (ii) remove Proprietary Information from America Online's premises, or (iii) use Proprietary Information for my own benefit or for the benefit of any third party.
3. The foregoing obligations shall not apply to any information which I can establish to have (i) become publicly known without breach of this Agreement by me; (ii) been given to me by a third party who is not obligated to maintain confidentiality; or (iii) been developed by me prior to the date this Agreement is signed, as established by documentary evidence. If I receive information with uncertain confidentiality, I agree to treat such information as Proprietary Information until I have verification from management that such information is neither confidential nor proprietary.
4. All Proprietary Information used or generated during the course of working for America Online is the property of America Online. I agree to deliver to America Online all documents and other tangibles (including diskettes and other storage media) containing Proprietary Information upon termination of my employment with America Online or otherwise within three (3) days after America Online so requests.
5. I acknowledge and agree that all writings or works of authorship, including, without limitation, program codes or documentation, produced or authored by me in the course of performing services for America Online, together with any copyrights on those writings or works of authorship, are works made for hire and the property of America Online. To the extent that any such writings or works of authorship may not, by operation of law, be works made for hire, this Agreement shall constitute an irrevocable assignment by me to America Online of the ownership of, and all rights of copyright in such items, and America Online shall have the right to obtain and hold in its own name, all rights of copyright, copyright registrations and similar protections which may be available in the works. I agree to give America Online or its assignees all assistance reasonably required to perfect such rights.

6. I shall and hereby do assign to America Online my entire right, title and interest in any invention, technique, process, device, discovery, improvement or know-how, patentable or not, hereafter made or conceived solely or jointly by me while working for America Online, which relates in any manner to the actual or anticipated business or research and development of America Online or is suggested by or results from any task assigned to me or work performed by me for or on behalf of America Online or for which America Online equipment, supplies, facilities, information or materials are used. I shall disclose any such invention, technique, process, device, discovery, improvement or know-how promptly, and execute a specific assignment of title to America Online, and do anything else reasonably necessary to enable America Online to secure patent, trade secret or any other proprietary rights in the United States or foreign countries.
7. Any inventions I have made or conceived before my employment with America Online are listed and described below. These items are excluded from this Agreement.
8. I understand that I may continue to work on, and retain rights to, projects of my own interest outside of America Online provided that (i) they do not fall under paragraphs 5 or 6 above; (ii) they do not interfere in any way with my time at work for America Online; and (iii) should any products with potential commercial application result from any such project, America Online shall be given the right of first refusal to purchase and market such products.
9. I shall not submit any article for publication, or deliver any public speech that contains any information relating to the business of the Company or that identifies me as an employee or representative of the Company without receiving the prior written consent of an officer of America Online.
10. During the term of my employment by America Online and for a period of one year after the termination of my employment for any reason but not less than three years from the date of this agreement, I will not, within the United States or any other country in which America Online or a licensee of America Online is then operating or preparing to operate, directly or indirectly, own, manage, operate, join, control, be employed by or participate in the ownership, management, operation or control of, or be connected in any manner with, any business of the type and character of business engaged in by America Online at the time of such termination.
11. I represent and warrant that: (i) I am able to enter into this Agreement and that such ability is not limited or restricted by any agreements or understandings between me and other persons or companies; (ii) I will not disclose to America Online or its clients, or induce America Online to use or disclose, any proprietary information or material belonging to others, except with the written permission of the owner of such information or material; and (iii) any information, materials or products I develop for, or any advice I provide to, America Online shall not rely or in any way be based upon confidential or proprietary information or trade secrets obtained or derived by me from sources other than America Online. I hereby agree to indemnify and hold America Online harmless from and against any and all damages, claims, costs and expenses, including reasonable attorneys' fees, based on or arising, directly or indirectly, from the breach of any agreement or understanding between me and another person or company including, but not limited to, liability arising from any confidential or proprietary information or trade secrets I have obtained from sources other than America Online.
12. I will fully comply, and do all things necessary for America Online to fully comply, with all appropriate U.S. Government laws and regulations, and with the provisions of contracts between America Online and the agencies of the U.S. Government or contractors, which relate to patent rights, technical data, or to the safeguarding of information and material.

13. While working for America Online and for a period of one year after any termination of my employment with America Online, I will not attempt, either directly or indirectly, to induce or attempt to influence any employee of America Online to leave America Online's employ.
14. While working for America Online and for a period of one year after any termination of my employment with America Online, I will not solicit business from any of America Online's customers, either directly or indirectly, for the benefit of anyone other than America Online or participate or assist in any way in the solicitation of business from any such customers as an employee of or consultant to another entity, unless the business being solicited is not competitive with the services provided by America Online to such customers.
15. I acknowledge and agree that:
- a) (i) my contractual obligations under paragraphs 2, 10, 11, 13 and 14 have a unique and very substantial value to America Online, (ii) I have sufficient assets and other skills to provide a reasonable livelihood for myself while such paragraphs are in force, and (iii) I am subject to immediate dismissal by America Online for any breach of those provisions and that such dismissal shall not relieve me from my continuing obligations under this Agreement or from the imposition by a court of any judicial remedies, such as money damages or equitable enforcement of those provisions.
  - b) the terms and provisions of this Agreement are applicable to all information and materials developed for, or any advice provided to, America Online prior to the signing of this Agreement; and
  - c) the termination of my employment with America Online, for any reason, shall not relieve me from complying with the undertakings and agreements contained herein, which call for performance prior or subsequent to the termination date, including, but not limited to those undertakings and agreements set forth in paragraphs 2, 4, 10, 11, 13 and 14.
16. Should I be found liable for any action taken to enforce this Agreement, I will reimburse the Company for its reasonable attorneys' fees and court costs.
17. No act or failure to act by America Online will waive any right contained herein. Any waiver by America Online must be in writing and signed by an officer of America Online to be effective.
18. This Agreement shall be binding on my heirs, executors and administrators and on successors and assigns of America Online; however, I shall not have the right to assign this Agreement.
19. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by a court with jurisdiction over the parties to this Agreement, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable force and effect.
20. This Agreement shall be governed by the laws of the Commonwealth of Virginia as such laws are applied to contracts executed by Commonwealth of Virginia residents and performed entirely within the Commonwealth of Virginia.
21. This document constitutes my entire Agreement with America Online with respect to its subject matter, superseding any prior negotiations and agreements. This Agreement may not be changed in any respect except by a written agreement signed by both myself and an officer of America Online.

22. All remedies provided herein are cumulative and in addition to all other remedies which may be available at law or in equity.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date:

For America Online, Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Prior inventions to be excluded from this Agreement are listed and briefly described below:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____